

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U-7083-C) and Comtech Telecommunications Corp. and Typhoon Acquisition Corp., a wholly owned Subsidiary of Comtech for Approval of the Transfer of Control of TeleCommunication Systems, Inc.

Application 16-02-011
(Filed February 17, 2016)

**DECISION AUTHORIZING TRANSFER OF CONTROL OF
TELECOMMUNICATIONS SYSTEMS, INC. TO
COMTECH TELECOMMUNICATIONS CORP**

Summary

This decision grants the unopposed joint application filed February 17, 2016 by TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U-7083-C), Comtech Telecommunications Corp. and Typhoon Acquisition Corp., a wholly owned subsidiary of Comtech Telecommunications Corp. (together Applicants) for authorization, pursuant to Public Utilities Code Section 854,¹ to transfer control of TeleCommunication Systems, Inc. to Comtech Telecommunications Corp.

This proceeding is closed.

¹ All Section references are to the Public Utilities Code, unless otherwise stated.

1. Parties to the Transaction

TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (TCS) is a Maryland corporation with its principal business office located at 275 West Street, Annapolis, MD 21401.² It was granted a certificate of public convenience and necessity (CPCN), for authority to provide resold local exchange services throughout the State of California as a competitive local exchange carrier (CLEC) in May 2008.³ TCS's services are used by large wireless carriers, VoIP (Voice-over Internet Protocol) providers, cable TV system operators, PBX users and mobile voice service providers. TCS does not provide long distance voice toll services or local exchange voice dial tone services to residential customers.

Comtech Telecommunications Corp. (Comtech) is a publicly traded⁴ Delaware corporation with its principal business office located at 68 South Service Road, Suite 230 Melville, NY 11747.⁵ Comtech designs advanced telecommunications solutions for a diverse customer base, through three complementary segments: telecommunications transmission, mobile data communications and RF microwave amplifiers.

² See Application at page 2-3. According to the application, TCS aggregates and delivers emergency local, VoIP, telemetric, PBX and mobile 911 call delivery, precision location platforms, applications that include navigation, locator applications, text messaging, secure wireless communications systems and cybersecurity operations.

³ See Decision (D.) 08-05-006 in Application (A.)07-11-006.

⁴ Comtech is traded on the National Association of Securities Dealers Automated Quotations System (NASDAQ)

⁵ Application at page 4.

Typhoon Acquisition Corp. (Typhoon) is a Maryland corporation that is a wholly-owned subsidiary of Comtech. It was formed solely for the purpose of completing the acquisition of TCS.⁶ Typhoon's business address is 68 South Service Road, Suite 230 Melville, New York 11747.

TCS, Comtech and Typhoon are collectively the "Applicant".

2. Proposed Transaction

The application describes a transaction whereby Typhoon would tender an offer to purchase all of the outstanding shares of TCS common stock on December 7, 2015. Typhoon would then merge into TCS, which would survive as a corporation and become a wholly owned subsidiary of Comtech.⁷ Upon merger, Typhoon will cease its separate corporate existence.⁸

Applicants indicate that the transaction will enable them to better meet the local and national needs of their customers and will enhance competition within the enterprise telecommunications marketplace. Applicants represent that the transaction will not adversely affect the operation of TCS, nor result in negative economic impacts upon jobs or facilities in California,⁹ because TCS will remain the entity providing service to customers in California. Comtech and TCS are non-dominant competitive carriers that do not control a substantial portion of the California telecommunications market, and will remain so after the merger. There will be no customer transfers.¹⁰

⁶ *Id.* Upon completion of the acquisition, Typhoon will cease its separate corporate existence, will be merged into TCS and TCS will be the surviving corporation.

⁷ Application at page 4.

⁸ *Id.*

⁹ Application at page 7.

¹⁰ *Id.*

3. Procedural Matters

The applicants filed the application on February 17, 2016, along with Exhibits A through L.¹¹

Notice of the Application was published in the Commission's Daily Calendar on February 19, 2016. The application is unopposed.

4. Discussion

The Applicants request Commission authorization pursuant to § 854 for Comtech's acquisition of and control of all TCS assets, including regulated telecommunications assets in California and other jurisdictions. Section 854 states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

Section 854 requires that the Commission review a proposed transaction, before it takes place, in order to assure that it is in the public interest. The Commission has broad discretion under § 854 to approve or reject a proposed

¹¹ The exhibits filed with the Application are: **Exhibit A** –Certificate of Qualification to Transact Business in California; **Exhibit B** –Biographies of TCS Executive Officers; **Exhibit C** – Biographies of Comtech Management Team; **Exhibit D** – Agreement and Plan of Merger dated November 22, 2015; **Exhibit E** –Transaction Presentation; **Exhibit F** –Transaction Press Release; **Exhibit G** –General Questions and Answers; **Exhibit H** –Employee Questions and Answers; **Exhibit I** – Organizational Charts Pre and Post Transaction; **Exhibit J** –Securities and Exchange Commission (SEC) Form SEC 10-K; **Exhibit K** –SEC Form 10-Q; **Exhibit L** – SEC Form 8-K.

transaction. If necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.¹²

When a company that does not possess a CPCN desires to acquire control of a company or companies that do possess a CPCN, the Commission will scrutinize the acquiring company as if it were a new applicant seeking the type of CPCN held by the company being acquired.

As discussed below, Comtech meets the financial requirements applicable to CPCN applicants with authority to provide resold local exchange services throughout the State of California as a competitive local exchange carrier (CLEC)¹³. The transfer of control will not present any detriment to the public interest because, as represented in the application, the transaction will not have any effect on management of Comtech or TCS, will not change TCS's existing tariff, and will not adversely affect the services provided to Comtech's or TCS's existing customers.

TCS has complied with all performance bond, surcharge and fee requirements of the Commission.

4.1. Financial Qualifications

An applicant who desires to operate as a provider of resold local exchange telecommunications services must demonstrate that it has a minimum of \$25,000

¹² D.01-06-007, 2001 Cal. PUC LEXIS 390, *24.

¹³ TCS is a non-dominant interexchange carrier and has no facilities within the state of California.

in cash or cash equivalent for operations of the company, plus the costs of deposits to be paid to other carriers.¹⁴

TCS holds a CPCN to provide resold local exchange and interexchange telecommunications services and has no facilities in California. Therefore, the acquiring company Comtech must demonstrate that it possesses a minimum of \$25,000 in cash or cash equivalent to meet the Commission's financial requirements plus an amount equal to the deposit required by Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Frontier California Inc. (formerly Verizon California Inc.), Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, and Consolidated Communications of California Company (formerly SureWest Telephone) for one year following certification. Acceptable forms of financial documentation include an audited balance sheet and income statements demonstrating sufficient cash flow or, in the alternative, one of several other cash equivalent financial instruments.¹⁵

As part of the exhibits to the application, Applicants have provided audited financial statements demonstrating that Comtech has cash and cash equivalents meeting the Commission's financial requirements for acquiring TCS.¹⁶

¹⁴ The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

¹⁵ See D.95-12-056, Appendix C (applicable to CLEC applications) and D.91-10-041, Appendix A (applicable to NDIEC applications) as modified by D.13-05-035.

¹⁶ Exhibit J to the Application, which is SEC Form 10-K, includes an audited financial statement for Comtech for the year ended July 31, 2015.

4.2 Technical Qualifications

Comtech, the acquiring entity, is required to make a reasonable showing of technical expertise in telecommunications or a related business. Comtech is already involved in the design, development and marketing of telecommunications products, systems and services. Exhibit C to the Application contains the biographies of Comtech's management team¹⁷. The application represents that, after the transfer of control, TCS and Comtech will combine financial, technical and managerial resources.¹⁸ Comtech's management team clearly demonstrates technical expertise in telecommunications sufficient to operate as a telecommunications provider.

4.3 Certifications

Applicants are required to disclose certification issues in other jurisdictions as well as in California, and failing to disclose these or making a false certification to the Commission is a violation of 1.1 of the Commission's Rules of Practice and Procedure.

Section VII of the application provides the Applicants' certification that no affiliate, officer, director, partner, agent or owner (directly or indirectly) of more than 10 percent of Applicants, or any person acting in management capacity for

¹⁷ The Comtech management team includes: Fred Kornberg, Executive Chairman (more than 30 years in telecommunications industry), Stan Sloane, Chief Executive Officer and President (more than 12 years in information systems industry), Michael Porcelain, Senior Vice President and Chief Financial Officer (18 years within telecommunications industry), Richard Burt, Senior Vice President (27 years within telecommunications industry), John Branscum, Senior Vice President of Comtech and President of subsidiaries Comtech EF Data Corp and Comtech Xicom Technology, Inc. (extensive background in engineering, physics and technology industries) and Michael Hrybenko, President of Comtech PST Corp (extensive background in engineering and technology industries).

¹⁸ Application at page 6.

Applicants, has: (a) held a similar position with a company that filed for bankruptcy; (b) has been personally found liable or held a similar position with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers of others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by a judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 et seq., 17200 et seq., or 17500 *et seq.* of the California Business and Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.¹⁹

¹⁹ This certification is required under D.13-05-035 and must be verified, under penalty of perjury by an officer or principal of the company. The application attaches notarized verifications, signed under penalty of perjury, by Michael D. Porcelain, Senior Vice President and Chief Financial Officer of Comtech Telecommunications Corp. and by Thomas Ginter, Vice President of Next Generation 9-1-1 for Telecommunication Systems, Inc. The verifications certify that each of them is familiar with the contents of the entire application and verify that the application is true and correct. Accordingly, the certifications satisfy the requirements of D.13-05-035.

The application discloses that the only entity holding more than 10 percent of Comtech's equity is First Eagle Investment Management, LLC, a U.S. investment management company based in New York City (FEIM).²⁰

4.4 California Environmental Quality Act (CEQA)

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. TCS has no facilities within California. The transfer of control that is the subject of this application proposes no new construction and requests no authority for future construction.²¹ Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Accordingly, the application is exempt from review under CEQA. Should Comtech seek to construct facilities or structures in the future, Comtech must file for additional authority, and submit to any necessary CEQA review.

4.5 Summary

Based on the above analysis of financial and technical qualifications, and after determination that environmental review is not necessary, we find that the transaction is not adverse to the public interest and grant the application pursuant to § 854.

²⁰ Application at page 5. First Eagle Investment Management, LLC holds approximately 10.1% of Comtech's outstanding shares, which are publicly traded. FEIM is located at 1345 Avenue of the Americas, 48th Floor, New York, NY 10105.

²¹ See Application at page 9.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3373, dated February 25, 2016, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received, and it is not necessary to disturb the preliminary determinations.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Commission reviews requests for transfer of control of regulated utilities under Section 854 in order to ensure that each transfer is in the public interest and is not adverse to the interests of customers.
2. An applicant seeking approval to acquire a telecommunications provider, is subject to the same scrutiny given to an applicant seeking initial authority to provide such services within California.
3. TCS (U-7083-C) is a Maryland corporation, which holds a CPCN to provide resold local exchange services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Frontier California Inc. (formerly Verizon California Inc.), Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, and Consolidated

Communications of California Company (formerly SureWest Telephone) by virtue of Decision (D.) 08-05-006 in A.07-11-006.

4. TCS has complied with all performance bond, user fee and surcharge reporting requirements of the Commission.

5. Comtech is a publicly traded Delaware Corporation which seeks to acquire TCS as a wholly owned subsidiary.

6. Typhoon is a Maryland corporation that is a wholly owned subsidiary of Comtech, formed solely for the purpose of completing the acquisition of TCS by Comtech.

7. Comtech does not hold a CPCN authorizing the company to provide telecommunications services in California.

8. If the transfer of control is approved, operations of TCS will continue without interruption, and TCS will continue to provide services to California customers under the same terms as they provided them prior to the acquisition.

9. Applicants have filed financial documents under seal to demonstrate that Comtech meets the Commission's financial requirements for issuance of a CPCN authorizing the provision of resold local exchange telecommunications services in California.

10. Comtech has demonstrated sufficient telecommunications expertise to satisfy Commission requirements.

11. Notice of this application appeared on the Commission Daily Calendar on February 19, 2016.

12. No protests to this application were filed.

13. No hearing is necessary.

Conclusions of Law

1. Applicants have demonstrated that Comtech meets the Commission's financial requirements for approval of a transfer of control.
2. The transfer of control is not adverse to the public interest.
3. Comtech has sufficient technical expertise in telecommunications to meet Commission requirements.
4. The decision should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. The joint application of TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U-7083-C), Comtech Telecommunications Corp. and Typhoon Acquisition Corp., a wholly owned subsidiary of Comtech Telecommunications Corp. for authorization to transfer control of TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. to Comtech Telecommunications Corp. is approved.
2. After acquisition by Comtech Telecommunications Corp., TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U-7083-C) will remain subject to all of the requirements previously set forth by the Commission in Decision 08-05-006 under which this Commission granted the certificate of operating authority.
3. After acquisition by Comtech Telecommunications Corp., TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U-7083-C) will remain subject to the performance bond requirements in Decision 13-05-035 and must maintain the performance bonds that it currently

has on file, including the requirement that it must submit a Tier-1 advice letter annually, not later than March 31.

4. TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U-7083-C) must not allow its performance bond to lapse during any period of its operation. Pursuant to Decisions 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

5. Within five (5) days of the closing of the transaction, Comtech Telecommunications Corp. and TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U-7083-C) shall notify the Commission's Communications Division, by letter, of the consummation of the transaction.

6. Application 16-02-011 shall remain open for further proceedings to determine whether Applicants should be subject to penalty for finalizing the transfer of control prior to Commission approval.

This order is effective today.

Dated _____, at San Francisco, California.